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Section 1362(b) provides the rule on when an S election will be effective. Section 1362(b)(2) provides, in relevant part, that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), an S election made after the first two and one-half months of a corporation's taxable year, results in the corporation not be treated as an S corporation until the taxable year following the year in which the S election is filed.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based solely on the facts submitted and representations made, we conclude that X established reasonable cause for failing to timely make an election to be an S corporation and, thus, is eligible for relief under § 1362(b)(5). Provided that X otherwise qualifies as an S corporation, we conclude that X will be recognized as an S corporation effective D1, if X files a completed Form 2553 effective D1 with the appropriate service center within one hundred and twenty (120) days from the date of this letter. A copy of this letter should be attached to the election.

Except as expressly set forth herein, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X is otherwise eligible to be an S corporation for federal tax purposes. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,
Associate Chief Counsel

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes